



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair
CAROLE MIGDEN
Member
DONNA ARDUIN
Member

August 31, 2004, Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/law/Lit_roster.pdf.

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – AUGUST 2004

Case Name

Court Number

New Gaming Systems, Inc.

U.S. District Court for the Eastern District of California
Case No. CIVS-03-1126-WBS PAN

FRANCHISE AND INCOME TAX
NEW CASES – AUGUST 2004

Case Name

Court Number

None

FRANCHISE AND INCOME TAX MONTHLY REFUND LITIGATION ROSTER

AUGUST 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Taxpayer's Counsel

Holly Kendig, Christopher W. Campbell

O'Melveny & Myers, LLP

Filed – 05/23/03

FTB's Counsel

Brian Wesley

<u>Issue</u>	
	<ol style="list-style-type: none"> 1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships. 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993. 3. Whether plaintiffs timely filed the suit for refund.

Years	1992 and 1993	Amount	\$4,912,037.26
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Status **Judgment and Notice of Entry of Judgment in favor of Defendant filed on August 17, 2004. Notice of Entry of Judgment filed by Plaintiffs' attorney on August 20, 2004.**

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03425690

Taxpayer's Counsel

Roy E. Crawford, Robert J. Waldow

Heller, Ehrman, White & McAuliffe, LLP

Filed – 10/23/03

FTB's Counsel

David Lew

Issue	Analysis
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.	
2. Whether section 24344(b) controls the allocation of interest expense.	
3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.	
4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.	
5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.	

Years	1991	Amount	\$2,824,983.00
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Status Discovery proceeding. Mandatory Settlement Conference scheduled for September 1, 2004, and Trial scheduled for September 20, 2004. **Defendant's Settlement Conference Statement mailed on August 25, 2004.**

Felix E. Leatherwood

Status Case Management Review scheduled for September 13, 2004. **Plaintiffs' Case Management Statement filed on August 25, 2004.**

Steven J. Green

Status	Trial Setting Conference continued to September 20, 2004.
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Steven Green

Status Supplemental Brief of Amicus Curiae, California Credit Union League, in Support of Appellants and Cross-Respondent mailed on August 27, 2004.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Filed – 03/06/02

Court of Appeal, 2nd Appellate District No. B165665**California Supreme Court No. S127086**Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

FTB's Counsel

Stephen Lew, Donald

Currier & Joseph O'Heron

Issues

1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
2. Whether interest income was properly characterized as business income.
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years

1986 through 1988

Amount

\$10,692,755.00

Status

Plaintiffs/Appellants' Petition for Review to the California Supreme Court filed on August 12, 2004. Request for Depublication (Petition for Review pending) filed by (non-party) Coalition of California Business and Taxpayer Organization on August 27, 2004. Amicus Curiae Letter in Support of Granting Review in Case No. S127086, mailed on August 31, 2004, to the Supreme Court by Tax Executive, Institute, Inc.

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Filed – 11/12/03

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

FTB's Counsel

Donald Currier

Issue

Whether Plaintiffs were entitled to a business bad debt reduction.

Years

1990 & 1993

Amount

\$65,738.00

Status

Trial scheduled for November 29, 2004. Plaintiffs' Motion for Summary Judgment, Memorandum of Points & Authorities, supporting Declarations, Statement of Facts and Request for Judicial Notice filed August 12, 2004.

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

Taxpayer's CounselRichard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtiger & Kinsella, LLP

Filed – 03/18/03

FTB's CounselAnthony Sgherzi
George M. Takenouchi

Issue Whether Plaintiff was a resident of California for the year in issue.

Years 1993 Amount \$1,172,932.00

Status **Order to Show Cause re: Dismissal continued to October 26, 2004; Plaintiff's Notice of Continuance filed on August 27, 2004.**

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Taxpayer's CounselThomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel**James W. Bradshaw**
McDonald, Carano, Wilson LLP
Las Vegas, Nevada

Issues

1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years 1991 and 1992 Amount \$13,204,611.00

Status Clark County District Court:
Discovery proceeding.

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Court of Appeal 2nd Appellate District Court No. B175952Taxpayer's CounselDerek L. Tabone, Esq.
Law Offices of Tabone, APC

Filed – 07/09/03

FTB's CounselBrian Wesley
Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999-2001 Amount \$209,742.00

Status Plaintiffs' Notice of Appeal filed on June 7, 2004.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Court of Appeal, 1st Appellate District Court No. A102915Taxpayer's CounselFTB's Counsel

Edwin P. Antolin

Joyce Hee

Morrison & Foerster, LLP

- Issues
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
 2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years 1993 and 1994 Amount \$2,185,718.00

Status **Plaintiffs/Appellants' Letter Brief filed August 17, 2004. Defendant/Respondent's Letter Brief filed August 18, 2004.**

THE LONG TERM INVESTMENT/Trustee Chase Bank v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 312094

Filed – 03/12/04

Taxpayer's CounselFTB's Counsel

Jeffrey G. Varga, Ethan Lipsig

Donald R. Currier

Paul, Hastings, Janofsky & Walker, LLP

Issue Whether Revenue and Taxation Code section 17651 is preempted by 29 USC § 1144 (a).

Years 1994, 1997 through 2000 Amount \$2,905,255.00

Status **Case Management Conference completed on August 30, 2004. Final Status Conference scheduled for April 21, 2005, and Trial to be held on May 5, 2005.**

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Taxpayer's CounselFTB's Counsel

William E. Taggart, Jr.

Marguerite Stricklin

Taggart & Hawkins

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status **Defendant's Final Reply Brief on Remand filed August 4, 2004.**

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board			
San Francisco Superior Court Docket No. CGC 03424737		Filed - 09/24/03	
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>	
Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang		Anne Michelle Burr	
Pillsbury Winthrop, LLP			

<u>Issue</u>	<ol style="list-style-type: none"> Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California. 		
<u>Years</u>	1993 and 1994	<u>Amount</u>	\$606,744.00
<u>Status</u>	Mandatory Settlement Conference rescheduled to November 17, 2004. Trial continued to December 6, 2004. Plaintiff's Joint Stipulation of Facts filed August 19, 2004. Defendant's Motion for Summary Judgment filed on August 19, 2004. Plaintiff's Motion for Summary Judgment filed August 20, 2004.		

MICROSOFT CORPORATION v. Franchise Tax Board			
San Francisco Superior Court Docket No. 400444		Filed – 10/19/01	
Court of Appeal, 1 st Appellate Dist. Div. 3 No. A105312			
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>	
James P. Kleier, Esq.		Julian O. Standen	
Preston Gates & Ellis, LLP			

<u>Issues</u>	<ol style="list-style-type: none"> Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper. 		
<u>Year</u>	1991	<u>Amount</u>	\$1,879,809.00
<u>Status</u>	Defendant/Appellant's Reply Brief filed on August 6, 2004.		

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board			
San Diego Superior Court Docket No. GIC772282		Filed – 08/27/01	
Court of Appeal, 4 th Appellate Dist. Division 1, No. D043058			
Court of Appeal, 4 th Appellate Dist. Division 1, No. D044362			
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>	
Steve Mather.		Leslie Branman-Smith	
Kajan, Mather and Barish			
Kevin Duthoy & Joseph A. Vinatieri			
Bewley, Lassenben & Miller, LLP			

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$227,246.00

Status **Defendant/Appellant's Reply Brief filed by mail on August 3, 2004. Extension granted on August 27, 2004, to Plaintiffs/Respondents to file Brief by September 9, 2004.**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381 Filed – 08/27/01
 Court of Appeal, 4th Appellate Dist. Division 1, No. D043058
 Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	
Kevin Duthoy & Joseph A. Vinatieri	
Bewley, Lassenben & Miller, LLP	

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status **Defendant/Appellant's Reply Brief filed by mail on August 3, 2004. Extension granted on August 27, 2004, to Plaintiffs/Respondents to file Brief by September 9, 2004.**

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767 Filed – 12/30/02

<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Antolin, Pilar M. Sansone, Amy Silverstein	Gregory Price
Silverstein & Pomerantz, LLP	

Issues

1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status Status Conference held on May 14, 2004; Case deferred pending outcome of General Motors. Case Management Conference scheduled for September 17, 2004.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705 Filed – 10/10/03

<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Spencer T. Malysiak	Michael Cornez
Spencer T. Malysiak Law Corp.	

Issue 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
 2. Whether a declaratory relief action can be brought to prevent the collection of tax.
 3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
 4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount \$90,773.05

Status **Answer of Defendant to Second Amended Complaint for Declaratory Judgment; Injunctive Relief; and Refund of Taxes Paid filed on August 6, 2004.**

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386
 Court of Appeal, 2nd Appellate Dist. No. B169465

Filed – 07/25/02

Taxpayer's Counsel

Richard C. Field
 Bingham McCutchen LLP

FTB's Counsel

Michael R. Weiss

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status **Respondent's Petition for Rehearing filed on August 12, 2004. Modification of Opinion filed (no change in Judgment); Petition for Rehearing denied on August 24, 2004.**

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008
 Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602

Filed – 02/20/01

Taxpayer's Counsel

Allan L. Schare
 McDermott, Will & Emery

FTB's Counsel

David Lew
 Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Plaintiff/Appellant's Stipulation of Extension of Time filed on August 11, 2004.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518
 Appellate Court – 1st Appellate Dist. Court No. A102401
 California Supreme Court No. S 125369

Filed – 09/13/01

Taxpayer's Counsel

Edward Winslow
 Layman, Lempert & Winslow

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status Remittitur issued on July 29, 2004.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court – 1st Appellate Dist. Court No. A105155

Taxpayer's Counsel

FTB's Counsel

Jeffrey M. Vesely, Esq.

David Lew

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status **Appellant's Request for Judicial Notice filed on July 12, 2004, denied on August 11, 2004, for failure to demonstrate relevance of the document. Request for Oral Argument filed by both Appellant and Respondent on August 12, 2004.**

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070

Filed – 05/25/04

Taxpayer's Counsel

FTB's Counsel

W. Patrick O'Keefe, Jr.

W. Patrick O'Keefe, Jr. Incorporated

Issue Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Years 1992 Amount \$45,415.00 Tax
\$ 9,083.00 Penalty

Status **Discovery proceeding.**

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4th Appellate Court No. C045386

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill

Michael J. Cornez

Carley A. Roberts

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 Amount \$5,342,122.00

Status **Defendant/Respondent's Request for Judicial Notice filed August 2, 2004. Ruling on Request for Judicial Notice deferred pending calendaring and assignment of the panel filed August 4, 2004. Plaintiffs/Appellants' Opposition to Respondent's Request for Judicial Notice filed August 17, 2004. Plaintiffs/Appellants' Reply Brief filed on August 19, 2004.**

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03423154

Taxpayer's Counsel

Amy L. Silverstein

Silverstein & Pomerantz, LLP

Filed – 08/05/03

FTB's Counsel

Paul Gifford

Issue Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.

Years 1997 Amount \$205,874.00

Status Notice of Entry of Judgment for Plaintiffs filed July 12, 2004.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

Issues

1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years 1986 and 1987 Amount \$1,741,534.00

Status Minutes Entered; Court's Ruling in favor of Defendant filed June 22, 2004. Defendant's Proposed Statement of Decision filed June 28, 2004. Plaintiff's Objections to Proposed Statement of Decision filed July 6, 2004.